



## EEOC Issues Final Regulations Allowing Retiree Health Plan Coordination With Medicare

*The EEOC has issued final regulations creating an exemption from ADEA's prohibitions for retiree health plans that alter, reduce or eliminate retiree benefits upon eligibility for Medicare or a comparable state-sponsored retiree health benefits program. This is appropriate and welcome guidance for employers that provide retiree health programs that coordinate with Medicare.*

### Background

In 2000, the U.S. Court of Appeals for the Third Circuit in *Erie County Retirees v. County of Erie, Pa.* held that unless it could satisfy the "equal cost/equal benefit rule," the Erie County retiree health plan would violate ADEA because it provided benefits to Medicare eligible retirees different from those provided to younger retirees. The *Erie* litigation finally ended in a settlement, under which Erie County "equalized" the benefits of the two groups by reducing benefits for younger retirees and paying a compensatory lump sum to the older retirees.

After the Third Circuit decision was handed down, the EEOC adopted and began enforcing the position that retiree health benefits that are reduced or eliminated on the basis of age or Medicare eligibility violate ADEA. When various employer and labor groups met with the EEOC and members of Congress to outline the consequences of this position (i.e., that many employers would significantly curtail or drop retiree health benefits altogether), the EEOC suspended enforcement activity. In 2003, the EEOC issued proposed regulations providing a narrow exemption from ADEA for retiree health plans that coordinate with Medicare and later sought to make the regulations final. The American Association of Retired Persons (AARP) sued and was initially successful in obtaining an injunction against issuance of the final regulations. This decision was later reversed and affirmed by a panel of the Third Circuit, which found that the EEOC's issuance of the regulations was a valid exercise of its authority. The full Third Circuit declined to review the panel's decision and the Supreme Court denied a request to stay the ruling pending AARP's filing for review of the *Erie* decision by the Supreme Court.

The EEOC has now issued the regulations as final.

## EEOC Final Regulations

The [final regulations](#) provide a narrow exemption from ADEA for retiree health plans that coordinate benefits with Medicare or a comparable state health benefit plan. The regulations also include an appendix with questions and answers that provide the following specific guidance –

- The exemption does not mean that ADEA does not apply to retirees – only the practice of coordinating retiree health benefits with Medicare or a comparable state health plan is exempted from ADEA.
- Employers may offer “Medicare carve-out plans.”
- The exemption also applies to dependent and/or spousal health benefits included as part of retirees’ benefits, although these may be altered, reduced or eliminated even when the retirees’ are not.
- The exemption only applies to the coordination of employer-sponsored retiree health benefits with Medicare or a comparable state health plan – it does not apply with respect to any other act, practice, or employment benefit (e.g., life or disability coverage).
- The exemption applies to existing as well as newly created employee benefit plans.
- The exemption does not apply for active employees over the age of Medicare (or state health plan) eligibility.

## Conclusion

It is gratifying that the EEOC listened to concerns expressed by employers and labor groups and that these important regulations have been issued. AARP has filed for review of the Third Circuit’s *Erie* decision by the Supreme Court, but it appears unlikely that review will be granted. Thus, employers sponsoring retiree health programs that coordinate with Medicare may feel more comfortable with their current plan design. However, sponsors still may want to review their programs to consider changes to combat spiraling health costs, or for other reasons.

Buck has had considerable success in helping employers review their retiree health care strategies and designs to achieve optimal results, particularly with the many new Medicare medical and prescription drug options available to employers and retirees. Buck’s consultants would be pleased to help you review your retiree health programs and discuss any issues in connection with them.

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*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*